

Civil Action No. 0:21-00098-MGL

Plaintiff Eddie Washington (Washington) filed this civil action against the U.S. Department of Homeland Security, Chad F. Wolf in his official capacity (Wolf), U.S. Immigration and Customs Enforcement, Tony Pham in his official capacity (Pham), the Attorney General, York County, York County Sheriff's Office (YCSO), and YCSO employee Sergeant Nicholas Schifferle. In Washington's amended complaint, he asserts eleven causes of action that may be divided into three groups: (1) claims brought pursuant to 42 U.S.C. § 1983 for violations of his constitutional rights (first, second, fourth, sixth, and eighth causes of action), (2) claims for violations of the South Carolina Constitution (third, fifth, seventh, and ninth causes of action), and

(3) state-law claims for civil conspiracy (tenth cause of action) and conversion/claim and delivery (eleventh cause of action).

This matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge recommending York County and YCSO's (collectively, Defendants) motion to dismiss the amended complaint be granted in part and denied in part. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August March 3, 2021. To date, Washington has failed to file any objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

Also, Washington originally named Wolf, the former Acting U.S. Secretary of the Department of Homeland Security, as a defendant when he filed his complaint. The Court takes judicial notice, pursuant to Fed. R. Evid. 201, that Alejandro Mayorkas is currently the U.S.

Secretary of the Department of Homeland Security. Therefore, pursuant to Fed. R. Civ. P. 25(d), the Court will direct the Clerk's Office to substitute Alejandro Mayorkas, U.S. Secretary of the Department of Homeland Security, as a defendant in this case. And, Washington originally named Pham, the Acting Director of U.S. Immigration and Customs Enforcement, as a defendant. The Court also takes judicial notice, pursuant to Fed. R. Evid. 201, that Tae D. Johnson is currently the Acting Director of U.S. Immigration and Customs Enforcement, and will direct the Clerk's Office to substitute him as a defendant in this case as well.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court Defendants' motion to dismiss the amended complaint is **GRANTED IN PART** and **DENIED IN PART**. Specifically, Defendants' motion to dismiss Washington's federal claims brought pursuant to 42 U.S.C. § 1983 for money damages, claims for violations of the South Carolina Constitution, and claim for civil conspiracy is **GRANTED**; Defendants' motion to dismiss Washington's claim for conversion is **GRANTED** as to Defendant York County and **DENIED** as to Defendant YCSO. Accordingly, Defendant York County is dismissed from this action.

Furthermore, Washington's request for declaratory relief is denied as to Defendants where the request is grounded in his claims brought pursuant to 42 U.S.C. § 1983 and for violations of the South Carolina Constitution. And, because York County is dismissed from this action, Washington's request for a "permanent injunction compelling Defendants to return [his] property[.]" Washington's First Amended Complaint at Prayer for Relief, is denied as to York County.

Lastly, the Court directs the Clerk's Office to substitute Alejandro Mayorkas, U.S. Secretary of the Department of Homeland Secretary, and Tae D. Johnson, Acting Director of U.S. Immigration and Customs Enforcement, as defendants in this case.

IT IS SO ORDERED.

Signed this 8th day of April 2021, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.